

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	8:02CR432
)	
v.)	
)	
JAMES BENFORD,)	ORDER
)	
Defendant.)	
_____)	

This matter is before the Court on defendant's motion to dismiss (Filing No. 98). The defendant was indicted on December 18, 2002, in a one-count indictment (Filing No. 1) which charged him with a conspiracy to distribute or possess with intent to distribute fifty (50) grams or more of a mixture or substance containing cocaine base, (*i.e.*, crack cocaine).

He waived jury trial and went to trial before the Court on April 15, 2003, and was subsequently found guilty by the Court. On July 14, 2003, he was sentenced to three hundred twenty-four (324) months imprisonment, followed by five (5) years of supervised release, with certain special conditions.

In the interim, defendant filed a motion for new trial, and this motion was denied by the Court. After sentencing, defendant filed a notice of appeal (Filing No. 64), appealing his sentence to the United States Court of Appeals for the Eighth Circuit. By an opinion and mandate filed April 14, 2004, the Court of Appeals affirmed the judgment of the district court and

the defendant's sentence. No further action was taken in this matter until October 14, 2009, when, pursuant to the recent modifications to the crack cocaine sentencing guidelines, an order was entered reducing defendant's sentence to two hundred sixty-two (262) months.

On November 5, 2009, defendant filed the present motion to dismiss. The Court has reviewed the motion and finds it is untimely and without merit and should be denied. Accordingly,

IT IS ORDERED that defendant's motion to dismiss is denied.

DATED this 26th day of January, 2010.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court